



SAN DIEGO  
DEFENSE LAWYERS

# THE UPDATE

SPRING + SUMMER 2015

## Preparing a Challenging Witness for Deposition or Trial

By Alan J. Cohen, Ph.D.

The strength of key witness testimony at deposition can make a significant difference in attorney confidence as he or she approaches settlement negotiation or mediation. At trial, the abilities of the key witness to communicate effectively to jurors can determine how the evidence of the case will be interpreted and can seriously impact the ultimate outcome.

Every trial attorney has at one time or another faced the dilemma of having an excellent case with just one problem-- the key witness does not come across as a very likable, credible or effective presenter.

The key witnesses in a civil case are typically the plaintiffs and the defendants, and their stories are the most important ones that will be told. However, giving testimony during deposition or trial draws the non-expert witness into territory that is foreign and probably intimidating. The witness is commonly naive to the workings and strategies of the litigation process and to the implications of his or her responses within the legal framework. The effective

witness must do more than just tell the truth. Honesty and integrity form only the foundation level of witness communication, and the communication structure that is built upon it must have strong walls, with doors and windows that do not leak. The key witness must communicate in a way that is credible, likable, understandable, and has the power to impact and influence.

The dilemma that develops between actual witness honesty and perceived witness credibility stems from the complexities of human communication, which always involves potential differences in meaning drawn between the content of the words spoken and the context in which the words are arranged and nonverbally delivered. When in doubt as to the meaning of any communication, the listener will favor his interpretation of the contextual or nonverbal cues received.

As a communications psychologist who consults for attorneys in key witness preparation, I think of three distinctly different areas of the context of testimony that require attention. The first area I call fundamental presentation issues, the second emotional-behavioral issues, and the third strategic issues. A witness who is weak in any



one of these three areas of communication context can significantly damage a case even while telling the truth in the best way he or she knows how. In performing this work, I assist the attorney as part of a work-product protected process, sometimes using a video-camcorder to provide audio-visual playback for the witness. An attorney is always present during my work and more than one attorney may help in role playing as the interviewer for deposition, direct, cross and adverse testimony as the situation demands.

### Fundamental Presentation Issues

The key witness faces a problem similar to the job applicant trying to make a favorable first impression at an interview. The juror will expect the witness to look a certain way

*continued on page 13*

### IN THIS ISSUE

Preparing a Challenging Witness for Deposition or Trial.....	1	Ensuring Paralegal Fee Recovery Through Proper Billing Standards.....	6
President's Message.....	2	California Civil Law Update.....	8
Lunch & Learn: Judge Hoffman's Best and Worst Practices in Mediation.....	3	On the Move.....	11
Bottom Line.....	3, 4, 5, 9	Trailer Towing Basics: Part 1.....	15
Lunch & Learn: Taking an Effective Expert Deposition.....	4		

# President's Message

By *Alexandra N. Selfridge*  
 THE LAW OFFICES OF  
 KENNETH N. GREENFIELD



So far this year, SDDL has had two happy hours, the first of which was at Dublin Square Authentic Irish Pub & Grill, where a good time was had by all. In addition, many of you attended the joint SDDL and Consumer Attorneys of San Diego mixer at Bar Basic on May 6, 2015, furthering one of SDDL's purposes – the promotion of civility. With a record-breaking 120 people attending, we hope to make this an annual event!

Please mark your calendars for SDDL's Annual Golf Tournament and Juvenile Diabetes Research Foundation Benefit on July 24, 2015, when we return to the Country Club of Rancho Bernardo. Please also make yourself available to judge a round at SDDL's Annual Mock Trial Competition, which will take place at on October 22, 23, and 24.

SDDL has already sponsored five "Lunch and Learn" MCLE presentations, including seminars by Patrick Kearns, Judge Hoffman, Manny Valdez, Judge Oberholtzer, and Bob Harrison. Next month, we can look forward to a "Lunch and Learn" presentation by Brian Rawers regarding voir dire on June 9, and an evening seminar by Christina Bernstein, Johanna Schiavoni, and Robert Shaughnessy regarding appeals on June 17.

For those who have not seen it yet, I encourage you to read the May/June edition of San Diego Lawyer for, "The Art of Disagreeing without being Disagreeable," an article jointly authored by CASD President, Tim Blood, and myself regarding the art of disagreeing without being disagreeable.

We've already had a great year, and we have much more planned to benefit our members, the defense bar, and our community. See you at the next SDDL event! ♦

## SDDL OFFICERS

President | Alexandra N. Selfridge  
 Law Offices of Kenneth N. Greenfield

Vice-President | Stephen T. Sigler  
 Neil, Dymott, Frank, McFall, Trexler,  
 McCabe & Hudson APLC

Treasurer | Bethsaida Obra-White  
 Lorber, Greenfield & Polito, LLP

Secretary | Patrick J. Kearns  
 Wilson Elser Moskowitz Edelman &  
 Dicker, LLP

## SDDL DIRECTORS

Gabriel M. Benrubi  
 Belsky & Associates

N. Benjamin Cramer  
 LaFollette Johnson

Eric R. Dietz  
 Wingert Grebing Brubaker & Juskie, LLP

Colin M. Harrison  
 Wilson Getty LLP

Andrew B. Kleiner  
 Wingert Grebing Brubaker & Juskie, LLP

Robert C. Mardian III  
 Henderson Caverly Pum & Charney LLP

E. Kenneth Purviance  
 Hughes & Nunn LLP

## MEMBERSHIP INFORMATION

Membership is open to any attorney who is primarily engaged in the defense of civil litigants. Dues are \$160/year. The dues year runs from January 1 to December 31. Applications can be downloaded at: [sddl.org](http://sddl.org)

## THE UPDATE

Editor | Robert C. Mardian III  
 Asst. Editor | Eric R. Dietz  
 Design | April Woodard Design  
[www.aprilwdesign.com](http://www.aprilwdesign.com)

The Update is published for the mutual benefit of the SDDL membership, a non-profit association composed of defense lawyers in the San Diego metropolitan area. All views, opinions, statements and conclusions expressed in this magazine are those of the authors, and they do not necessarily reflect the opinions or policies of the SDDL or its leadership. The SDDL welcomes the submission of articles by our members on topics of general interest to its membership.

SDDL UPDATE  
 c/o Robert Mardian  
 Henderson Caverly Pum & Charney LLP  
 12750 High Bluff Drive, Suite 300  
 San Diego, CA 92130  
 P | (858) 755-3000, Ex. 120  
[rmardian@hcesq.com](mailto:rmardian@hcesq.com)

## SDDL 2015 Calendar of Upcoming Events

- |            |  |
|------------|--|
| July 24    | Golf Tournament at the Country Club of Rancho Bernardo at 1:00 p.m.  |
| August 21  | Padres Game & Tailgate (Padres vs. Cardinals) at Petco Park at 7:10 p.m.   |
| Sept. 12   | Red Boudreau Trial Lawyers Dinner at The US Grant at 6:00 p.m.<br><i>(Co-Sponsored by the Consumer Attorneys of San Diego and the American Board of Trial Advocates)</i> |
| Oct. 22-24 | Mock Trial Tournament  |

## LUNCH AND LEARN

# Judge Hoffman's Best and Worst Practices in Mediation

By *Alexandra N. Selfridge*  
LAW OFFICES OF KENNETH N.  
GREENFIELD

Judge Hoffman is one of San Diego's most sought-after neutrals. During his February 17, 2015 presentation on the mediation environment in 2015, he provided SDDL members with an inside-look into the best and worst practices when mediating your case. Following a distinguished career as a litigator, Judge Hoffman served on the San Diego Superior Court bench for more than 13 years. He retired from the bench in 1998 and has since served as a full-time mediator, arbitrator, and private Judge.

Thirty years ago, lawyers would just settle their own cases. Now, 70-80% of cases end up in some sort of mediation or settlement conference. In the 1990's and 2000's, most mediators were retired judges, running their own mediation practices. Now, mediation is pretty dominated by groups. There is more formal training available for mediators now. Mediation is here to stay, and it works to resolve cases.

With respect to trends in mediation, pre-mediation conferences are becoming more popular, but Judge Hoffman is not necessarily sold on them. People generally use it as an opportunity to "lobby" their case to him. At the same time, these conferences can streamline the issues to be addressed at the mediation. In contrast, joint mediation sessions are becoming less popular, which Judge Hoffman believes is a good thing. Joint sessions are difficult to control, and it can take time to repair the damage that can be done during such a session.

Judge Hoffman cautioned against a number of mediation practices to avoid, such as the late filing of mediation briefs. Another practice to avoid is calling a mediator, before hiring him, to "feel him out" or get his reaction to the case. Judge Hoffman warned against using the mediation process as an informal method of discovery, or to gain a trial continuance. He also advised against "buddying up" to the mediator in front of the other side. Finally, Judge Hoffman and other mediators are particularly bothered when attorneys make comments, such as, "I have five more cases in the hopper." The implication is that if the mediator obtains a favorable result, there will be more business down the line.

Neutrals should remain exactly that – neutral.

Judge Hoffman also discussed some new ideas and angles in the field of mediation, such as the use of two mediators – both a "direct" one, and a more "touchy-feely" one. It is more costly than a single mediator, but can be very effective for the right case. In a case where there is some sort of threshold issue causing a logjam, another idea is jury mediation. The mediation provider hires a jury consultant, who gathers jurors. The lawyers then present the issue by way of witness testimony, closing argument, or other appropriate method. The parties listen to the jury deliberate, and then return to mediation. Again, this is costly, but effective for the right case.

Another idea proposed by Judge Hoffman, is having a mediator attend and observe trial. The mediator can watch the jury, and take notes. This idea is for a case where the parties want to settle, and an appeal is likely. The mediator would call the lawyers in the evening or on weekends and give an opinion regarding what the jury is really thinking. Judge Hoffman has watched quite a few jury trials, and was usually able to tell which way the case was going. This option could be useful in a big case. ♦

## Bottom Line

**Case Title:** Sleiman, et al. v. Ahmedl.

**Case Number:** 37-2013-00065291-CU-PA-CTL

**Judge:** Hon. Joel M. Pressman

**Plaintiff's Counsel:** Diana Adjadj and Brandon M. Smith

**Defendant's Counsel:** Bill Getty and Colin Harrison of Wilson Getty, LLP

**Type of Incident/Causes of Action:** Motor Vehicle Negligence

**Settlement Demand:** Initial demand was \$750,000.00 (\$650,000 for plaintiff No. 1 and \$100,000 for plaintiff No. 2); immediately prior to trial, the demand was \$334,998.00 (\$264,999 for plaintiff No. 1 and \$69,999 for plaintiff No. 2 - Code Civ. Proc., § 998.).

**Settlement Offer:** \$45,000 to plaintiff No. 1 and \$15,000 to plaintiff No. 2 - Code Civ. Proc., § 998.

**Trial Type:** Jury

**Trial Length:** 10 days

**Verdict:** Defense (10-2)

**Background:** The lawsuit concerned an automobile accident occurring on the 15 North freeway. The defendant was a driver of a Town Car for hire and the two plaintiffs were passengers in the town car at the time of the accident. The accident involved an "unknown hit & run" vehicle who fled the scene and was never located. Plaintiff No. 1 alleged a traumatic brain injury and orthopedic injuries as a result of an automobile accident. Plaintiff No. 2 alleged orthopedic injuries.

## SAN DIEGO DEFENSE LAWYERS' ANNUAL MOCK TRIAL TOURNAMENT

Presenting Sponsor: Judicate West  
SAVE THE DATES!!  
October 22-24, 2015

Attorneys Needed to Volunteer as Judges.  
Please Mark Your Calendar!

# Bottom Lines

**Case Title:** In Re: The John Williamson Trust, dated June 2, 2008

**Case Number:** 37-2012-00152421-PR-TR-CTL

**Judge:** Hon. Julia C. Kelety

**Creditor's Counsel:** Robert F. Wiggins, Esq.

**Trustee's Counsel:** Robert C. Mardian III, Esq., Henderson, Caverly, Pum & Charney LLP

**Type of Incident/Causes of Action:** Creditor alleged Trustee Breached a Promissory Note

**Settlement Demand:** \$250,000

**Settlement Offer:** \$150,000

**Trial Type:** Bench

**Trial Length:** 2 days

**Decision:** No Liability ♦

**Case Title:** In Re: Estate of Hubert Stanley Dunn

**Case Number:** 37-2011-00152499-PR-PW-CTL

**Judge:** Hon. John S. Meyer

**Petitioner's Counsel:** Michael R. Adkins, Esq.

**Respondent's Counsel:** Robert C. Mardian III, Esq., Henderson, Caverly, Pum & Charney LLP

**Type of Incident/Causes of Action:** Will Contest

**Settlement Demand:** \$100,000

**Settlement Offer:** \$13,000

**Decision:** Respondent ♦

**Case Title:** Keegan v. Keefe, M.D.

**Case Number:** 37-2012-00102112-CU-MM-CTL

**Judge:** Hon. John S. Meyer

**Plaintiff's Counsel:** Michelle Paul, Esq.

**Defendant's Counsel:** Ben Howard, Esq.

**Type of Incident/Causes of Action:** Medical Malpractice, Alleged failure to diagnose Spontaneous Osteonecrosis of the Knee (SONK).

**Settlement Demand:** \$250,000

**Settlement Offer:** Waiver of costs

**Trial Type:** Jury

**Trial Length:** 6 days

**Verdict:** Defense ♦

## LUNCH AND LEARN

# Taking an Effective Expert Deposition

By Colin M. Harrison  
WILSON GETTY LLP

On May 12, 2015, Robert "Bob" Harrison, Esq. presented at SDDL's fifth "Lunch & Learn" program of the year entitled "Taking an Effective Expert Deposition". Mr. Harrison shared several vignettes from his 35 years of practice. Mr. Harrison is the regional managing partner with the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker LLP. He is a past SDDL lawyer of the year and is a past president of California Defense Counsel, the Association of Southern California Defense Counsel, and the San Diego County Barristers Club. He is a frequent speaker on trial tactics and other legal topics, and has been a presenter/demonstrator on multiple occasions for the ABOTA "Trial by Masters" program.

Mr. Harrison's seminar focused on taking an effective expert witness deposition. During this well attended seminar, Mr. Harrison shared his experiences with taking expert depositions and how the testimony later

played out in trial. He offered several tips for taking an effective expert deposition, including a detailed outline that can be utilized for any expert deposition. He stressed the importance of doing your "homework" on the witnesses, including obtaining transcripts, reviewing articles/publications prepared by the expert, reviewing the CV's of the expert, and reviewing any articles that the expert relied upon in coming to his/her opinions. He shared examples of how performing such "homework" led to valuable information to discredit the experts. Mr. Harrison also identified the importance of gauging the personality of the expert (i.e. how did the expert react under pressure) during the deposition, such as looking for "hot buttons" that can be used at the time of trial. He also urged the importance of remaining civil and professional while taking an expert deposition. ♦



PALOMAR  
INVESTIGATIVE<sup>®</sup>  
GROUP, INC

"Reliable Information For Business Decisions"™

1.866.931.1300

piginc.com

Since 1991

- RESEARCH
- SURVEILLANCE
- INTERVIEWS

# New Court of Appeal Opinion Re: Attorney-Client Privilege and Joint Clients

By Brittany H. Bartold

LEWIS BRISBOIS BISGAARD & SMITH LLP

The Court of Appeal, Second Appellate District, Division One (LA) issued an opinion in *Anten v. Superior Court* (2015) 233 Cal.App.4th 1254, addressing the following issue: “[when] joint clients do not sue each other but one of them sues their former attorney, can the nonsuing client prevent the parties to the lawsuit from discovering or introducing otherwise privileged attorney-client communications made in the course of the joint representation?” (*Id.* at p. 1256.) The court held that “[in] a lawsuit between the attorney and one or more of the attorney’s joint clients, based on an alleged breach of a duty arising from the attorney-client relationship, relevant communications between the attorney and any of the joint clients, made in the course of the attorney-joint-client relationship, are not privileged.” (*Id.* at p. 1257.)

Lewis Anten (“Anten”) and Arnold and Lillian Rubin (“the Rubins”) jointly retained a law firm to represent them on a matter of common interest. (*Anten v. Superior Court, supra*, 233 Cal.App.4th at p. 1257.) Anten subsequently filed a malpractice action against the lawyers. In response to discovery propounded by Anten, the lawyers objected that Anten’s discovery sought communications between the lawyers and the Rubins that were protected by the attorney-client privilege, which

the Rubins expressly declined to waive. (*Ibid.*) Anten moved to compel further responses. The trial court denied the motion on the basis of the attorney-client privilege. (*Ibid.*) Anten petitioned for writ relief. (*Id.* at p. 1258.)

The Court of Appeal granted Anten’s petition for writ of mandate. (*Anten v. Superior Court, supra*, 233 Cal.App.4th at p. 1261.) The court explained that under Evidence Code section 958, the communications at issue are not privileged in Anten’s lawsuit. (*Id.* at p. 1258.) “Section 958 provides that ‘[t]here is no privilege under this article [i.e., no attorney-client privilege] as to a communication relevant to an issue of breach, by the lawyer or by the client, of a duty arising out of the lawyer-client relationship.’” (*Ibid.* quoting Evid. Code., § 958.) Further, because Anten and the Rubins were joint clients, the Rubins’ communications with the lawyers were not confidential as to Anten. (*Anten, supra*, at p. 1259.) Thus, the court

## Bottom Line

**Case Title:** James & Carlye Samatas v. Nile Miami, et al. (JR Construction & Framing, Inc.)

**Case Number:** L.A.S.C. BC 456 738

**Judge:** Honorable Victor Chavez, Department 96

**Plaintiff’s Counsel:** James F. Boyle, Lord & Cohen

**Defendant JR Construction’s Counsel:** David P. Ramirez, Tyson & Mendes, LLP

**Type of Incident/Causes of Action:** Negligence, Breach of Warranty

**Settlement Demand:** \$800,000 prior to trial

**Settlement Offer:** \$450,000 prior to trial; CCP 998 for \$200,000

**Trial Type:** Jury

**Trial Length:** Three months

**Verdict:** Defense verdict as to JR Construct. ♦

concluded that section 958 prohibits the Rubins, and the lawyers on behalf of the Rubins, from invoking the attorney-client privilege in Anten’s lawsuit against the lawyers with respect to relevant attorney-client communications made in the course of the joint representation. (*Id.* at p. 1260.) ♦



## Your Partner in Resolution

NEW TO OUR SAN DIEGO PANEL

  
Hon. Susan Huguenor  
Esq.

  
Steven KrUIS  
Esq.

  
Monty McIntyre  
Esq.

  
Stephen McAvoy  
Esq.

  
Hon. Mac Amos

  
Hon. Patricia Covett

  
Hon. Charles Hayes

  
Hon. Yuri Hofmann

  
Hon. Anthony Joseph

  
Hon. Edward Kolker

  
Hon. Lillian Lim

  
Hon. Wayne Peterson

  
Hon. Sheridan Reed

  
Hon. Jobi Halper

  
Hon. Cary Miller

  
Hon. Michael Roberts

For information and scheduling, please contact Genevieve Kenizwald at [Gen@adrservices.org](mailto:Gen@adrservices.org) or (619) 233-1323

www.adrservices.org | San Diego/619-233-1323 | Orange County/949-863-9800 | Century City/310-201-0010 | Los Angeles/213-683-1600

# Ensuring Paralegal Fee Recovery Through Proper Billing Standards

By: *Jacqueline S. Vinaccia*

LOUNSBERY FERGUSON ALTONA & PEAK LLP

The continued lament of paralegals all over the country is that they are not secretaries or clerical staff. They are paraprofessionals with specific education, training and continuing education requirements. They have specific skills honed by training and experience that provide a separate and specific benefit to attorneys and clients. I put aside, for the moment, the conundrum this creates for attorneys and supervisors on “Administrative Professionals Day.” I will instead focus on the best avenue to ensure maximum recovery of the paralegal fees recorded and billed to the case or project.

The insurance industry recognized the value of the reduced paralegal rate decades ago. Insurance companies have incorporated into their defense counsel guidelines, distinctions between tasks they will compensate a law firm for at paralegal rates and those they will compensate at attorney rates. These guidelines also define clerical tasks that are not compensable because they are appropriately considered a part of the attorney’s overhead and included in the attorney’s hourly rate. The bottom line is courts and clients are watching fee invoices carefully, making paralegal fees an easy target for challenge and reduction.

## The U.S. Supreme Court Weighs In

The ongoing debate over recovery of hourly fees billed by paralegals seems resolved by U.S. Supreme Court opinions in *Missouri v. Jenkins* 491 U.S. 274, 109 S.Ct.2463 (1989) and most recently by *Richlin Security Service Co. v. Chertoff, Secretary of Homeland Security* 218 S.Ct.2007 (2008). Yet, I have seen fee petitions as recently as this year argue both for and against the separate hourly billing of paralegal fees. The job of attorneys, paralegals and ultimately fee auditing experts is to provide the client with the most effective and economical legal services available. Properly assigned, paralegals are a valuable component of this formula.

The *Jenkins* Court reviewed a prevailing plaintiff’s right to recover attorneys’ fees under a Federal Civil Rights Statute (48 U.S.C. § 1988). The defendant State of Missouri challenged the recovery of separately billed paralegal fees. The Court found the right to

recover a “reasonable attorney’s fee” must refer to a reasonable fee for the attorney’s work product. It refused to limit the term only to those fee entries personally performed by licensed members of the bar. (*Jenkins*, 491 U.S. 274, 285). The definition of “reasonable fee” for attorney work product has historically been driven by the marketplace. The Court, thus, concludes the appropriate compensation to the prevailing party includes work separately billed by paralegals if that is the standard in the marketplace where the action is litigated. The Court recognized the shift to separate billing for paralegal time in the legal community and the statutory purpose in providing the same level of compensation otherwise available in the marketplace. Preventing the prevailing party from billing separately for paralegal time, while allowing defense counsel in the same action to obtain market rate for paralegal work thwarts that statutory purpose. (*Id.*, at 286–287.)

The *Jenkins* Court also recognized the benefit to civil rights litigants of the use of paralegals and law clerks to perform legal tasks under attorney supervision at lower billing rates. (*Id.*, supra at 288.) The Court warned against the potential that these tasks will be performed by attorneys rather than paraprofessionals if separate billing is disallowed, drastically increasing litigation fees.

The rationale of the *Jenkins* Court was reaffirmed and solidified most recently in the *Richlin Security Service Co. v. Chertoff* case (“*Richlin*”). Unlike *Jenkins*, *Richlin* addressed fee recovery under the Equal Access to Justice Act (5 U.S.C. § 504 and 28 U.S.C. § 2412 (d) (1)(A) (“EAJA”). Defendant argued that the application of the different recovery statute distinguished the earlier *Jenkins* decision and required a calculation of the paralegal fees based on actual cost to plaintiffs’ counsel rather than fees billed to Plaintiff.

*Richlin* found that a straightforward reading of the statute allows the recovery of paralegal fees at market rate. (*Richlin*, supra 218 S.Ct at 2012.) The Court agreed with *Jenkins* that the definition of “attorneys’ fees” as used in the statute cannot have been limited only to work performed by members of the bar. The Court also rejected the argument that the term could have different meanings for different statutes, finding it “self-evident” that Congress meant

to embrace the recovery of paralegal fees when it enacted the attorney fee recovery statutes. (*Id.*, at 2014.) The overriding rule is that fees should be recoverable in accordance with the customary practice in the relevant marketplace. (*Id.*, at 2017.) If separately billed paralegal fees are customary in the marketplace, they are recoverable by the prevailing plaintiff under the fee shifting statute.

## What is Paralegal Work?

Once paralegal fees are separately billable and recoverable, they are subject to the same standards and scrutiny as attorneys’ fees. The paraprofessional designation of paralegal is subject to regulation in many jurisdictions, though not yet to the extent attorneys are governed and regulated.

The National Federation of Paralegal Associations (“NFPA”) defines a paralegal as someone who has qualified for that title “through education, training or work experience, to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer.” NFPA requires that these paralegals be either be employed by or retained by a lawyer, law firm, governmental agency or other entity or “authorized by administrative, statutory or court authority to perform this work.” (See, NFPA Informal Ethics Opinion 95-4, n. 1.) NFPA has taken the position that it is not ethical for paralegals to bill clerical tasks which are non-professional.

California appears to have adopted the NFPA definition and requires minimum education, certification and continuing education requirements for paralegals. California Business and Professions Code Section 6450 defines a Paralegal as a person who:

- Is qualified by education (Certificate or Bachelors Degree) or, training, or work experience (High School diploma plus three years working under supervision of attorney);
- Either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity; and
- Performs substantial legal work under the direction and supervision of an active member of the State Bar of California.
- Tasks performed by a paralegal include, but are not limited to, case planning; development and management; legal

research; interviewing clients; fact gathering and retrieving information, drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.

Paralegals cannot provide legal advice, represent a client in court, select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal. Paralegals also cannot engage in conduct that constitutes the unlawful practice of law.

The NFPA definition is also restated by several courts in decisions reviewing fee petitions regarding the recovery of paralegal fees. Federal Courts addressing the issue have reasoned that paralegal fees billed for work that would have otherwise been performed by the attorney and not the legal secretary, are recoverable under a myriad of Federal Statutes. Courts caution that the refusal to allow recovery of separately billed paralegal work, in accordance with market trends, risks increased attorney rates and over inflation or disproportionate allocation of legal fees. This work would be performed by attorneys or subsumed into an increased attorney hourly rate if not separately billable by the paralegal at a lower rate. (See, *Miller v. Alamo* 983 F2d 865, 862; and *In re Busy Beaver Building Centers, Inc.* 19 F3d. 833, 856-866.)

State Courts have applied this logic to develop standards for paralegal fee recovery. Washington Appellate authority examines the following six criteria when determining paralegal recovery:

- Services performed are of a legal nature;
- The services are supervised by an attorney;
- Paralegal qualifications are appropriately substantiated in the fee petition;
- The tasks performed are appropriately described to allow review for legal as opposed to clerical work;
- The time stated to complete the described tasks is reasonable; and
- The rate charged for the time billed is reasonable under local community standards for the same level personnel. [See, *Absber Const. Co. v. Kent School Dist. No. 415*, 79 Wn. App. 841, 844-845 (1995).]

Courts are clear that purely clerical tasks should not be billed at paralegal rates regardless of the qualifications of the biller. Work done by librarians, clerical personnel and other support staff is “generally considered within the overhead component of a lawyer’s fees.” *Id.*; *In re Olsen*, 884 F.2d 1415, 1426-27 (D.C. Cir. 1989); *In re North*, 313 U.S.App.D.C.188, 195 (D.C. Cir. 1995). “[W]ork of a predominantly secretarial nature is thus properly included in the office overhead rather than as a separate charge. See *Ramos v. Lamm*, 713 F.2d 546, 558-59 (10th Cir.1983).” (*Spell v. McDaniel*, 852 F.2d 762, 771 (C.A.4 1988).) In *Keith v. Volpe*, 644 F.Supp. 1317, 1323 (C.D. Cal. 1986), the court disallowed hours claimed for such items as “pick-up copies,” “Xerox/distribute memo,” “tag exhibits,” “file review,” “organize files,” and “reproduce documents.” The court found that all “such routine work” was reflected as overhead in the hourly rates. (*Id.*)

Though there are several definitions and examples of what paralegal work is and is not, the actual recovery of paralegal fees has been appropriately and sometimes inappropriately challenged on several fee petitions. Total recovery can be increased by a few simple adjustments in approach to billing by paralegals for the work they perform.

### Recovery of Paralegal Fees

There are practical challenges in the recovery of paralegal fees regardless of legal authority allowing recovery. Paralegals are assigned repetitive or tedious tasks that are crucial to the progress of a case but do not require the constant judgment of an experienced attorney. In the litigation context these assignments can include document management, expert management, or gathering discovery information, to name a few. And in the transactional context they can include obtaining and researching public records as well as tracking changes. The key to recovery of paralegal fees is clear communication with the client and eventually the reviewer of the invoice; be that reviewer the court or a fee auditing expert.

Ideally, the particularities of each case should be addressed and discussed with the client. But the attorney in direct communication with the client is not always fully aware of the time requirements of the paralegal’s job. The paralegal’s time will be recorded and sent to a client on the billing invoice. To facilitate clarity, the paralegal should communicate with the attorney the scope and breadth of the assignment given the paralegal in order to answer the potential questions from the client or, better yet, so the attorney can discuss these issues with the client at the beginning of the matter

and include a description of the work in the retention agreement. It is difficult for the client or auditor to deduct or reduce time billed for projects reasonably explained to the client at the beginning of the case and included in the retention agreement.

Excellent examples of this concept are specific retention agreements drafted between large insurers and the defense counsel they retain to defend their insureds in mass toxic tort litigation. The insured is exposed to several lawsuits in several jurisdictions that often rely upon the same core set of facts, documents and experts. These assignments benefit from a database, a core group of personnel and a paralegal, or two, to keep the documents and the experts organized. The creation and maintenance of a database or organization of documents is usually considered a purely clerical function. The repeated telephone calls to experts regarding depositions or reports are likewise usually considered purely clerical. In my expert practice, I have been asked to review the fee invoices of several of these types of firms and have seen appropriate paralegal billing for what are otherwise non-billable clerical tasks such as maintenance of these databases or coordination of experts because they were addressed at the outset of the assignment and provided for in the retention agreement. The client is made fully aware of the value of centralized maintenance of this information by paralegals with legal training and judgment.

Another, perhaps even the most important, key component of communication necessary to the recovery of paralegal fees lies in the billing description. The paralegal must appropriately and completely describe what work is being performed and the benefit of the work to the case. If the paralegal includes what was done and *why* in a short billing description, with a separate time allocation, the chances of the billing entry passing a fee audit or judicial review dramatically increases.

The mass toxic tort context again provides an excellent example. The client is likely to produce an enormous quantity of documents that require review and analysis for content and privilege, and indexing for use in the multitude of cases. The plaintiffs will also have to provide an untold quantity of documents from medical records to employment records to earnings records all of which need to be reviewed and analyzed for various uses. The routine vague billing entries for these tasks leave the fee invoices full of duplicative looking entries and do not provide the client or reviewer of any idea what work was actually completed. (i.e., “Review client

# California Civil Law Update

By Monty McIntyre  
ADR SERVICES, INC.

## CALIFORNIA SUPREME COURT

### Employment

*Williams v. Chino Valley Independent Fire District* (2015) \_ Cal.4th \_, 2015 WL 1964947: The California Supreme Court reversed the trial court's cost award to defendant after it granted summary judgment. Government Code section 12965(b) governs cost awards in FEHA actions, allowing trial courts discretion in awards of both attorney fees and costs to prevailing FEHA parties. The trial court's discretion, however, is bounded by the rule of *Christiansburg Garment Co. v. EEOC* (1978) 434 U.S. 412, and an unsuccessful FEHA plaintiff should not be ordered to pay the defendant's fees or costs unless the plaintiff brought or continued litigating the action without an objective basis for believing it had potential merit. (May 4, 2015.)

## CALIFORNIA COURTS OF APPEAL

### Arbitration

*Garcia v. Superior Court (Southern Counties Express, Inc.)* (2015) \_ Cal.App.4th \_, 2015 WL 2345557: The Court of Appeal granted a writ petition, reversed the trial court's order compelling arbitration, and remanded for consideration and determination of threshold issues concerning the right to arbitration. The trial court erred by failing to rule on the threshold question whether the arbitration provisions of the truck driver agreements were exempt from the application of the FAA by virtue of section 1 of the FAA and California Labor Code section 229. (C.A. 2<sup>nd</sup>, May 15, 2015.)

### Attorney Fees

*Leeman v. Adams Extract and Spice, LLC* (2015) \_ Cal.App.4th \_, 2015 WL 2405585: The Court of Appeal reversed the trial court's order entering judgment based upon a settlement under Code of Civil Procedure section 664.6 but modifying and reducing the stipulated award of attorney fees. While the court has the authority to refuse to issue the requested consent judgment, if it approves the settlement, it cannot modify an express term of the settlement. (C.A. 1st, filed April 28, 2015, published May 21, 2015.)

### Business & Professions

*Pacific Caisson and Shoring, Inc. v. Bernards*

*Bros. Inc.* (2015) \_ Cal.App.4th \_, 2015 WL 2394697: The Court of Appeal affirmed the trial court's judgment against a contractor. The trial court properly held that an unsatisfied judgment against a contractor, and in favor of the employees' pension fund for unpaid pension benefits, was "substantially related" to the contractor's construction activities and warranted suspension of the contractor's license for failure to notify the Contractors' State License Board of the judgment. (C.A. 2<sup>nd</sup>, May 18, 2015.)

### Civil Procedure

*Bergstein v. Stroock and Stroock and Lavan LLP* (2015) \_ Cal.App.4th \_, 2015 WL 163622: The Court of Appeal upheld the trial court's order granting an anti-SLAPP motion to strike and awarding \$150,222.64 in attorney fees to defendants. Plaintiffs sued the lawyers who represented their adversaries in litigation over various financial transactions. Plaintiffs asserted the lawyers engaged in illegal conduct when they "solicited and received . . . confidential, privileged, and/or proprietary information" from plaintiffs' former attorney, and used that information "in devising the legal strategy to be employed" in the litigation against plaintiffs. The trial court properly granted the anti-SLAPP motion and awarded attorney fees to defendants. The complaint arose from protected First Amendment activity; there was insufficient evidence to show defendants' conduct was illegal as a matter of law; and plaintiffs did not show a probability of prevailing on their claims, both because the statute of limitations had run and because the litigation privilege barred plaintiffs' claims. (C.A. 2<sup>nd</sup>, filed May 1, 2015, published May 8, 2015.)

*Kabran v. Sharp Memorial Hospital* (2015) \_ Cal.App.4th \_, 2015 WL 2394007: The Court of Appeal affirmed the trial court's order granting a motion for new trial. Plaintiff timely filed her notice of intention to move for new trial within the 15-day jurisdictional deadline, and the notice set forth the grounds for a new trial: newly discovered evidence. Upon this filing, the trial court's jurisdiction was complete. Even assuming *arguendo*, that plaintiff failed to meet Code of Civil Procedure section 659a's filing deadline for supporting affidavits, the trial court did not lose fundamental jurisdiction to act on her motion by virtue of that circumstance, and the late filing did not render the court's order, or its acceptance of the late-filed papers, void.

The trial court did not abuse its discretion in granting the motion for new trial. (C.A. 4th, May 20, 2015.)

*Lee v. Silveira* (2015) \_ Cal.App.4th \_, 2015 WL 2374359: The Court of Appeal affirmed the trial court's order denying plaintiff's request for expert costs and interest under Code of Civil Procedure section 3291. Plaintiff claimed the verdict was higher than the pre-trial Code of Civil Procedure section 998 offer to settle for \$1 million. The trial court properly denied plaintiff's motion. In determining whether a defendant failed to obtain a more favorable judgment under section 998, only the actual medical bill payments by insurance companies should be included in the judgment or award before it is compared to the offer to compromise. (See *Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541, 548. (C.A. 5th, May 15, 2015.)

*Leeman v. Adams Extract and Spice, LLC* (2015) \_ Cal.App.4th \_, 2015 WL 2405585: See summary above under Attorney Fees.

*Nolte v. Cedars Sinai Medical Center* (2015) \_ Cal.App.4th \_, 2015 WL 2408188: The Court of Appeal affirmed the trial court's judgment following its order sustaining a demurrer without leave to amend. A plaintiff who received outpatient treatment from a physician located in a Cedars Sinai Medical Center failed to state an Unfair Competition Law claim arising from the facility's allegedly undisclosed facilities fee. (C.A. 2<sup>nd</sup>, May 21, 2015.)

*People ex rel. California Department of Transportation v. Hansen's Truck Stop, Inc.* (2015) \_ Cal.App.4th \_, 2015 WL 1877332 A133252: The Court of Appeal reversed the trial court's denial of the property owner's motion for litigation expenses under Code of Civil Procedure section 1250.410(a). The Court of Appeal held that the statute does not restrict a court to considering only the offer and demand made prior to the first date set for trial. And, in a bifurcated proceeding, "the trial on issues relating to compensation" means the trial in which the amount of compensation is determined. (C.A. 1st, April 24, 2015.)

*Rodriguez v. Cho* (2015) \_ Cal.App.4th \_, 2015 WL 2128675: The Court of Appeal reversed the trial court's order denying defendant's motion to set aside a default judgment. The default judgment was void because it exceeded the amount of damages stated in the complaint. (C.A. 2<sup>nd</sup>, May 7, 2015.)



## Consumer Protection

*Harrold v. Levi Strauss and Co.* (2015) \_ Cal. App.4th \_ , 2015 WL 2396231: The Court of Appeal affirmed the trial court's order denying class certification. The trial court correctly concluded that Civil Code section 1747.08 of the Song-Beverly Credit Card Act of 1971 does not prohibit the collection of personal email information once a credit card transaction has been concluded. (C.A. 1st, May 19, 2015.)

## Employment

*Baez v. California Public Employees Retirement System* (2015) \_ Cal.App.4th \_ , 2015 WL 2163612: The Court of Appeal affirmed the trial court's demurrer ruling concluding that a plaintiff who alleged he was treated differently because he was Latino did not state a claim for relief under the anti-affirmative action provision originally enacted as Proposition 209, now codified in Article I, section 31 of the California Constitution. It is undisputed that the sole intent behind Proposition 209 (and thus section 31) was to eliminate affirmative action and other preferential treatment programs, not to reenact the equal protection-based bar against discriminating against protected groups that already existed elsewhere in California's Constitution. (C.A. 2nd, May 8, 2015.)

*Hirst v. City of Oceanside* (2015) \_ Cal.App.4th \_ , 2015 WL 2148069: The Court of Appeal affirmed the trial court's denial of defendant's motion for judgment NOV. Plaintiff, an employee of American Forensic Nurses, Inc., brought a Fair Employment and Housing Act claim against the City of Oceanside, alleging she was sexually harassed by an Oceanside police officer while she was providing phlebotomist services on behalf of the Oceanside Police Department. The jury found plaintiff proved her claim and awarded her \$1.5 million in damages against the City. After reducing the amount for which the officer was found responsible, the trial court entered judgment for plaintiff for \$1.125 million. Defendant filed a motion for new trial and a motion for judgment NOV. The court ordered a new trial on both liability and damages because "the issues are so interrelated that damages cannot be separated from the facts underlying liability." Plaintiff did not appeal this ruling. The trial court denied the motion for judgment NOV and defendant appealed this ruling. The trial court properly denied the motion for judgment NOV because plaintiff was a "person providing services pursuant to a contract" and therefore she was entitled to recover against the City for its employee's sexual harassment. (Government Code section 12940(j)(1).)

*Marzec v. California Public Employees Retirement System* (2015) \_ Cal.App.4th \_ , 2015 WL 2197573: The Court of Appeal affirmed in part and reversed in part the trial court's order sustaining a demurrer without leave to amend. Former police officers and firefighters who purchased additional years of service credit, but who became disabled and stopped working before their service retirement age, sued CalPERS because it paid them based upon their final compensation and did not pay for the additional years of service credit purchased. The demurrer ruling was reversed as to causes of action for rescission and breach of fiduciary duty. Plaintiffs alleged that CalPERS failed to disclose the potential loss of the value of purchased service credit if plaintiffs suffered a disability, a disclosure that CalPERS, as a fiduciary, was alleged to have been required to make. This pleading was sufficient to survive demurrer. (C.A. 2nd, May 8, 2015.)

*Williams v. Superior Court (Marshalls of CA, LLC)* (2015) \_ Cal.App.4th \_ , 2015 WL 2345601: The Court of Appeal denied plaintiff's writ petition seeking to overturn the trial court's discovery ruling in a PAGA case. The Court of Appeal held that the trial court properly compelled Marshalls to produce contact information for the employees only at its Costa Mesa store and denied production of employee contact information at the other 128 Marshalls stores statewide. The trial court properly ordered that plaintiff could renew his motion to compel the remaining information after he had been deposed "for at least six productive hours." The court also properly ruled that, in opposition to any such motion, Marshalls could attempt to show plaintiff's substantive claims had no factual merit. (C.A. 2nd, May 15, 2015.)

## Insurance

*Albert v. Mid-Century Insurance Company* (2015) \_ Cal.App.4th \_ , 2015 WL 2398554: The Court of Appeal affirmed the trial court's order granting summary judgment for defendant carrier. There was no coverage under the homeowners policy for plaintiff's nonaccidental conduct of trimming her neighbor's olive trees. (C.A. 2nd, filed April 28, 2015, published May 20, 2015.)

## Real Property

*People ex rel. California Department of Transportation v. Hansen's Truck Stop, Inc.* (2015) \_ Cal.App.4th \_ , 2015 WL 1877332 A133252: See summary above under Civil Procedure.

*Peterson v. Wells Fargo Bank, N.A.* (2015) \_ Cal.App.4th \_ , 2015 WL 2162654:

# Bottom Lines

**Case Title:** Otay Land Co., LLC, et al. v. U.E. Limited, L.P., et al.

**Case Number:** GIC 869480

**Judge:** Richard E.L. Strauss

**Plaintiff's Counsel:** Devin T. Shoecraft, Esq. & Robert D. Shoecraft, Esq.

**Defense Counsel:** Brian A Rawers, Esq., & R. Gaylord Smith, Lewis Brisbois Bisgaard & Smith LLP; Barbara Suzanne Farley, Esq.; Stephen A. Sunseri, Esq., & Stephen F. Tee, Esq., Gatzke Dillon & Balance LLP;

**Type of Incident/Causes of Action:** CERCLA/HSAA

**Demand:** \$25,000,000

**Trial Type:** Bench

**Trial Length:** 46 days

**Decision:** Defense ♦

**Case Title:** Elias v. McJab Realty, Inc., et al.

**Case Number:** 37-2012-00093692-CU-BC-CTL

**Judge:** Hon. Joel R. Wohfeil

**Plaintiff's Counsel:** Steven McKinley, Esq., and Karen McKinley, Esq., Freeland, McKinley and McKinley

**Defendant's Counsel:** Brian A. Rawers, Esq., Lewis Brisbois Bisgaard & Smith, LLP

**Type of Incident/Cause of Action:** Real Estate Broker Malpractice; Former agent of broker absconds with \$345,000 in proceeds from the sale of the home. Plaintiff (husband) is a Navy SEAL

**Settlement Demand:** \$500,000

**Settlement Offer:** \$25,000

**Trial Type:** Jury

**Trial Length:** 9 days

**Verdict:** Defense (12-0) ♦

Summary judgment for plaintiffs seeking to quiet title was affirmed. A court ordered distribution of real property to a surviving spouse who executed and recorded a deed of trust on the real property in favor of a lender to secure a loan. Although she had a right to sell the property, that right did not convert the surviving spouse's life estate into a fee simple estate. The lender had no rights in the property upon the death of the surviving spouse. (C.A. 2nd, May 8, 2015.)

*continued on page 10*

**ENSURING PARALEGAL FEE RECOVERY THROUGH PROPER BILLING STANDARDS CONTINUED FROM PAGE 7**

documents. 6.5 hours.” A few dozen of these entries causes concern and often results in a percentage reduction or complete deduction for vague and incomplete billing entries.)

This problem is easily fixed by noting the volume of documents reviewed, by page, volume or box numbers and the reason for the review. Are the documents being prepared for the attorney to take the deposition of the expert cardiologist, or the treating pulmonologist? If the billing entries state that the paralegal is copying medical records for an attorney without further explanation, the entry is identified as clerical and deducted from the total recovery. If the billing entry explains that the correct medical records had to be selected and then prepared for the attorney to take the deposition of the most important expert witness for the opposing side, the entry is identified as appropriate deposition preparation and is not deducted by the auditor. I have challenged vague billing entries such as these in my expert practice and been successful in persuading reviewing courts to reduce the total awarded on fee petitions for such incomplete or clerical billing. (Instead try, “Review 2 of 10 banker’s boxes of client documents just received for appropriate indexing, for privilege and for production in several cases. 7.8 hours.”)

The likelihood of recovering paralegal fees is also increased if the paralegal exercises good judgment in billing. Paralegals and attorneys alike are often required to perform clerical tasks in order to get work done in a timely manner, or spend more time on a project than is reasonably billable. This is what the courts refer to when the opinions state that these tasks are considered part of the attorney’s overhead expenses and are subsumed in the attorney’s hourly rate. These clerical tasks or excessive time allotments present red flags for courts and auditors and can cause increased scrutiny as well as increased reductions. The paralegal can reduce these risks by looking over the billing and exercising good billing judgment in the description, the task and the time allotment.

*Reprinted with permission from the author. Originally printed in Recap, the California Alliance of Paralegal Associations Fall 2010 newsletter. Ms. Vinaccia heads the litigation team at Lounsbery Ferguson Altona & Peak LLP. She has written and presented on the topics of appropriate billing practices and fee auditing in local and national publications, and before organizations in across the U.S. ♦*

**CALIFORNIA CIVIL LAW UPDATE CONTINUED FROM PAGE 9**

*Sacramento Area Flood Control Agency v. Dhaliwal* (2015) \_ Cal.App.4th \_ , 2015 WL 2405573: The Court of Appeal affirmed the trial court’s eminent domain compensation award. The property owner claimed on appeal that the trial court prejudicially erred in allowing SAFCA to introduce evidence concerning “future access” to the property. The Court of Appeal held the trial court properly admitted the challenged evidence because such evidence had the potential to affect the property’s market value and was not conjectural, speculative, or remote. (C.A. 3rd, filed April 21, 2015, published May 20, 2015.)

*Salazar v. Thomas* (2015) \_ Cal.App.4th \_ , 2015 WL 1967231: The Court of Appeal reversed the trial court’s summary judgment based on the three year statute of limitations in Code of Civil Procedure section 338(d). On an issue of first impression, the Court of Appeal concluded that a notice of default under a void deed of trust provided notice of a cloud on the plaintiffs’ title, but did not dispute or disturb the plaintiffs’ possession of the property, and therefore the statute of limitations did not bar the quiet title action. (C.A. 5th, May 1, 2015.)

**Torts**

*Greene v. Bank of America* (2015) \_ Cal. App.4th \_ , 2015 WL 2206545: Summary judgment for defendants was affirmed. Under the doctrine of collateral estoppel, the determination of probable cause by the magistrate in plaintiff’s criminal proceeding, when the issue of the key defendant’s credibility had been raised before the magistrate, defeated plaintiff’s malicious prosecution claim as a matter of law. (C.A. 2nd, May 12, 2015.)

*Rosas v. BASF Corporation* (2015) \_ Cal. App.4th \_ , 2015 WL 2411917: The Court of Appeal reversed the trial court’s summary judgment for defendants. The trial court concluded that a two-year statute of limitations began to run on plaintiff’s claims in 2003, because the undisputed evidence demonstrated he was hospitalized with an unknown disease that he suspected was caused by exposure to a particular chemical at his work in a food flavoring plant. The Court of Appeal, however, concluded the evidence was susceptible to more than one legitimate inference. There was a question of fact for the jury to determine whether the facts known before 2006 were enough to put a reasonable person on inquiry notice that his lung disease was caused by the wrongful act of another. (C.A. 2nd, May 21, 2015.)

**Trade Secrets**

*Cypress Semiconductor Corporation v. Maxim Integrated Products, Inc.* (2015) \_ Cal. App.4th \_ , 2015 WL 1911121: The Court of Appeal upheld the trial court’s award of attorney fees to defendant under Civil Code section 3426.4. The Court of Appeal found no procedural error, ruled that the finding of bad faith was amply supported by evidence that defendants did no more than recruit employees of plaintiff, and defendant prevailed when plaintiff dismissed the suit to avoid an adverse determination on the merits. (C.A. 6th, April 28, 2015.)

Appeal reversed because bona fide purchasers of converted goods are ordinarily liable for conversion. The trial court was directed to enter a new order denying the motions. (C.A. 2nd, November 25, 2014.)

*Annocki v. Peterson Enterprises, LLC* (2014) \_ Cal.App.4th \_ , 2014 WL 6852964: The Court of Appeal reversed the trial court’s order sustaining a demurrer, without leave to amend plaintiffs’ complaint alleging negligence against a restaurant for failing to warn patrons about the dangerous condition of the Pacific Coast Highway. Plaintiffs made a sufficient showing of additional facts that may be alleged to establish that, although defendants did not and could not control conditions on the highway, defendants had a duty to warn patrons leaving the restaurant that only a right turn could safely be made from the restaurant’s exits. (C.A. 2nd, filed November 14, 2014, published December 5, 2014.)

*J. P. v. Carlsbad Unified School District* (2014) \_ Cal.App.4th \_ , 2014 WL 7012111: The Court of Appeal affirmed the trial court judgment for plaintiffs in an action for the molestation of two minors by an elementary school teacher. The trial court properly applied the doctrine of equitable estoppel regarding the filing of government tort claims against the school district. (C.A. 4th, filed November 19, 2014, published December 12, 2014.)

*State Ready Mix, Inc. v. Moffatt & Nichol* (2015) \_ Cal.App.4th \_ , 2015 WL 109869: The Court of Appeal upheld the trial court’s order sustaining a demurrer, without leave to amend, to a cross-complaint for indemnity and contribution. State was sued for preparing a bad batch of concrete used to construct a pier. State cross-complained against the civil engineer. The cross-complaint was barred by the economic loss rule. (Aas v. Superior Court (2000) 24 Cal.4th 627, 643.) State could not seek equitable indemnity or contribution for damages caused by the breach of its own contract. (Stop Loss Ins. Brokers, Inc. v. Brown & Toland Medical Group (2006) 143 Cal. App.4th 1036, 1041-1044.) (C.A. 2nd, January 8, 2015.) ♦

# On the Move

◆ **Beth Obra-White: Best of The Bar**

Congratulations go out to our very own Beth Obra-White, a lawyer in our San Diego office. Beth has been recognized by The San Diego Business Journal as one of the "Best of the Bar for 2015" which recognizes lawyers chosen by their peers to be the most outstanding in their field.



attorney who personifies the highest standards of civility, integrity and professionalism. Members of the Consumer Attorneys of San Diego, American Board of Trial Advocates, San Diego Defense Lawyers and the Association of Business Trial Lawyers of San Diego nominate and select the winner. The Red Boudreau Committee donates the proceeds raised from the dinner to St. Vincent de Paul Villages, also known as Father Joe's Villages.

◆ **Alan Brubaker Wins Broderick Award**

Wingert Grebing congratulates Alan on being named the 2015 recipient of the Daniel T. Broderick III Professionalism and Civility Award. Alan will be recognized at the 31st annual Red Boudreau Dinner on September 12, 2015.



Alan joins Charles Grebing as Wingert Grebing's second Broderick Award winner. Alan devotes his practice to complex civil litigation, including business and intellectual property disputes, product liability claims and employment matters. He has tried more than 60 cases to verdict in federal and state courts. Alan has served as president of the San Diego Chapter of the American Board of Trial Advocates and is a past-president of CAL-ABOTA.

Each year the Broderick Award is presented to an accomplished San Diego trial

He is a Fellow in the American College of Trial Lawyers, and is also a Fellow in the International Society of Barristers.



◆ **Renee Botham Named President of the San Diego Association of Insurance Professionals**

Renee Botham of Balestreri Potocki & Holmes has been elected President of the San Diego Association of Insurance Professionals for the 2015-2016 term.

The San Diego Association of Insurance Professionals is a professional association

dedicated to developing leaders in the insurance industry. The SDAIP provides its members with unique and proprietary education programs, leadership opportunities, and the ability to network with insurance professionals in all career categories, lines of insurance and cultural and experiential backgrounds.

Ms. Botham's practice focuses primarily on litigated matters involving the construction and hospitality industries. She has significant experience in trying and mediating complex premises and construction issues. She also has represented the interests of real estate professionals, engineers, attorneys, theme parks, entertainment venues, concert promoters, and employers in a broad variety of litigated matters. ◆

Construction Experts: General Contracting · Architecture/Engineering · Real Estate/Development

## Experience. Your best solution.



**Xpera Group is California's most comprehensive group of construction consulting experts.**

With extensive field experience, combined with well-honed testifying and communications skills, we can provide the technical expertise to handle almost any situation.

Since 2009, Xpera Group has connected 50 highly trained construction experts to more than 250 companies on over 1,500 assignments .

Get results. Put our expertise to work on your next project.

**| SERVICES**

- + Construction Forensics
- + Property Loss Evaluation
- + Construction Management
- + Property Condition Assessment
- + Construction Claims
- + Quality Assurance

**NEW**

- + Market Studies/Economic Research
- + Building Commissioning
- + Walkway Auditing

Contact: Charles Montgomery, Business Development - [cmontgomery@xperagroup.com](mailto:cmontgomery@xperagroup.com)  
San Diego | Bay Area | [www.xperagroup.com](http://www.xperagroup.com) | 877-49-XPORA





# SAN DIEGO DEFENSE LAWYERS

## 2015 Juvenile Diabetes Research Foundation Golf Benefit



A Portion of the Proceeds Will Benefit the  
**Juvenile Diabetes Research Foundation -**  
Dedicated to finding a cure

**FRIDAY, JULY 24, 2015 + THE COUNTRY CLUB OF RANCHO BERNARDO**

1:00 p.m. (check-in at 11:30 am) • 12280 Greens East Rd., San Diego, CA 92128

Join Us at the 16th annual SDDL Golf Benefit!

This is a great chance to relax and have fun with business associates, clients, friends and co-workers.  
If you don't golf, join us for the Post-Event dinner (\$50.00) and awards.



**Your Entry Fee of \$165.00 Includes:**

- Green fees and cart
- Box lunch and "Goody Bag"
- Scramble Format
- Longest Drive Contest
- Closest to Pin Contest
- Raffle Prizes and Awards
- Post-Event Dinner

*Sponsorship opportunities are also available.  
Print out sponsor form at [www.sddl.org](http://www.sddl.org)*

Need more info? Contact Patrick Kearns at  
619.321.6200 or [patrick.kearns@wilsonelser.com](mailto:patrick.kearns@wilsonelser.com)

Number of Golfers: \_\_\_\_ x \$165 or \$600 per foursome or Post-Event Dinner \_\_\_\_ x \$50

Name(s):

\_\_\_\_\_  
\_\_\_\_\_

Firm/Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

*Please Make Checks  
Payable to:  
San Diego Defense  
Lawyers  
P.O. Box 124890  
San Diego, CA 92112*

**COVER STORY - PREPARING A CHALLENGING WITNESS FOR DEPOSITION OR TRIAL CONTINUED FROM PAGE 1**

appropriate to the claims in his or her case, daily life, as well as courtroom decorum. Unfortunately, the witness may not have self-awareness of these aspects of presentation. The basic concept is to have the witness avoid anything that diverts the attention of the listener from hearing the essence of his communication, and enhance everything that will get his meaning across effectively. The witness should visually present in a non-distracting and congruent manner. The juror will consciously or unconsciously judge the witness from nonverbal implications of attire, make-up, jewelry, perfume, hair style, eyeglasses, and facial hair. It is important that the witness does not unwittingly feed into negative associations that the juror may bring to the context of the case.

Posture, gestures, and eye contact as well as unusual mannerisms may trigger prejudicial responses in the juror. Rate of speech, use of language, and length of response all affect comprehensibility. Vocal quality, pitch, and volume can attract the listener or turn the listener off.

If the juror cannot identify with or like the witness, the testimony will be problematic. While all the fundamental presentation issues are important in how they affect the juror, they become much more serious difficulties when they imply negative personality qualities or character quirks. These personally issues may turn into attorney nightmares at deposition or in the courtroom, where the experience of giving testimony is fraught with stressors and anxieties that commonly evoke the most glaring witness problematic behaviors.

**Emotional-Behavioral Issues**

The most important and often most difficult behaviors to change in the witness are those emotional-behavioral problems triggered by conscious or unconscious anxiety. The attorney may not know exactly what is wrong, but is

clear that a witness presentation problem exists. The challenging witness by definition will always present at least one such problem. The witness may appear fearful or nervous, or come off as angry, arrogant, defensive and argumentative. He or she may seem bored, shy, or detached, or appear to be avoidant, embarrassed, guilty, or pained. The witness may communicate a hysterical quality, or seem overdramatically grievous. Other individuals may laugh, make inappropriate satirical jokes, argue, try to question the interviewer, or engage in other question the interviewer, or engage in other odd, unpredictable or seemingly inexplicable response patterns.

More commonly, the witness may lapse into other tactical or defensive postures. He or she may ramble on excessively, or to the contrary say too little, change the subject without answering the question, answer unasked questions often with horrible implications, over-intellectualize, change voice tone, use counterproductive mannerisms or look fearful, hopeless and confused.

It is important to understand that the difficult witness is neither bad nor wrong. The witness is doing the best he or she can do. The challenging behaviors may be frustrating to the attorney, but the witness does not have the capacity to know there is a problem, and even when pointed out, will probably not know what to do to change it. The process of change is much more than saying, "don't do that" or "relax" or "say that more assertively."

Challenging behaviors do not imply lack of intelligence. At times, the most challenging witness may be the one with an extensive educational and highly honored background, who is articulate, clever, witty and 'damn angry about being the defendant in litigation.'

It is necessary to understand the psychological and emotional basis for the communication problem in order to change it. Problem behaviors must be pointed out in a positive way that does not shame the witness,

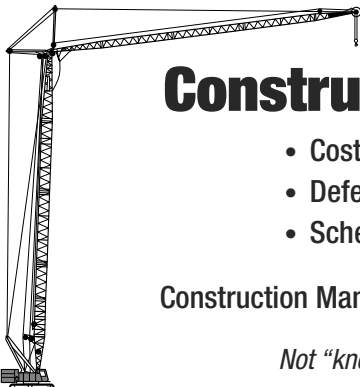
but encourages the creation of more effective behaviors. No one likes to be criticized. The communications psychologist initially builds rapport and trust with the witness, acknowledges what he or she does well and explains why it works for testimony. Then the consultant helps the witness identify non-beneficial behavior patterns, and educates the witness regarding the cause and effect relationship between anxiety and the resultant problematic responses. Consequently, the witness learns to decrease anxiety in the face "triggers" so that his or her mind can be free to examine suggestions for change. In the next stage, the communications psychologist, using a supportive context, models and coaches the witness toward improved alternatives.

For example, I worked with a witness manifesting a type of manic defense, who would laugh reflexively, ramble unnecessarily and then change the subject each time memories of his excruciatingly painful injuries were alluded to in the questioning. This was extremely problematic, since it made the witness appear not credible and not genuine, as well as somewhat strange and unlikeable. By using the training process, the witness learned to recognize the feeling that triggered the undesired response and generate a different and more effective response instead.

**Strategic Issues**

The key witness needs to understand case theory both from his own and from the opposition point of view. My observation is that most attorneys do not spend enough time mapping the strategic territory with the key witness. The witness often has no idea how to recognize the green go lights, the yellow caution lights and the red stop lights signaled by the interviewer's questions. When the witness is naive to the theories of the case, he or she is ill-prepared for the "land mines" that lie out there. Preparation for deposition or cross-examination must include making the witness knowledgeable of land mines,

*continued on page 14*



**Construction Expert Witness**

- Cost
- Defects
- Schedule
- Standard of Care
- Accidents/Injuries
- Employment

**Construction Management (Owner's Representative) Services**

*Not "knows about." But "been there, done that."*



Fred Nolta

**Nolta Consulting**

www.NoltaConsulting.com • 858-232-9299

**COVER STORY - PREPARING A CHALLENGING WITNESS FOR DEPOSITION OR TRIAL CONTINUED FROM PAGE 13**

and provide training to take a response in the direction of thematic case landmarks. This type of mapping creates a GPS compass of confidence and readiness for the witness.

As a result of this training, the witness does not need to memorize or rehearse responses because the witness has internalized the case sufficiently to generate appropriate responses automatically and naturally.

**Time Required for Witness Preparation**

How much time should be allocated for key witness preparation? Preparation time obviously will vary according to the experiences of the witness, and the fundamental presentation, emotional-behavioral and strategic issues. A key witness with significant behavior change issues should be allocated at least a full day of training. Challenging behaviors take time to identify, coach and change. It is also important to be able to assess the effectiveness of the training after a designated time-out period, whether after a lunch break, or even better several days later.

Key witness preparation compels the attorney to examine the case in ways he or she may not have considered. It presses the attorney to imagine and clarify the other side's strategy and tactics and look at the key witness in a different light. The attorney should assume that every witness requires training to point out strengths and improve weaknesses. It would be a mistake to believe that your witness will perform well under deposition or courtroom fire on the basis of casual office interviewing or case review. Actual role play rehearsal is necessary and always beneficial, for the attorney as well as the witness.

The best times to prepare your key witness are before the deposition and again before the trial. If depositions have already been given, then a good time to prepare the witness is within two weeks of trial. The learning curve is going to rise sharply, but unless reinforced, may fall back over time. If the training is to be a one-shot event, then conducting the training closer to the trial testimony date is better. If there will be an opportunity for two sessions, then the sessions should be separated for maximum learning opportunity.

The preparation of a key witness by an attorney is similar to the preparation of a key athlete by a coach. The athlete needs to understand the game plan and his or her role in the overall picture. Well before game day, even the exceptional athlete must know how to maximize his given skills and identify and overcome as many of his weaknesses as possible. The coach creates useful drills anticipating the needs of the game and helps the athlete practice to achieve success.

*Reprinted with permission from JuryInsights.com. About the author: Dr. Cohen is a litigation consultant with 20 years of mock trial experience and trial preparation. Email: [ajcohen@juryinsights.com](mailto:ajcohen@juryinsights.com) ♦*

*Save the Date*

September 12, 2015

*Revising Past Traditions*

Red Boudreau Dinner

*honoring*

Alan K. Brubaker, Esq.

*at*

US Grant Hotel

31<sup>ST</sup>  
Annual

PRESENTING SPONSOR: Lawyers' Mutual Insurance Company

# Trailer Towing Basics: Part 1

David King, PE

MEA Forensic Engineers & Scientists

The camping season is upon us. That means that families will be hooking up the trailer and heading out-doors for camping, fishing and other fun. Unfortunately, it also means there will be some trailer-related mishaps and collisions on the road.

There are a number of reasons a trailer can become a problem on the road. These include improper set up, misuse of or improper equipment, failure to load or prepare according to instructions, bad driving habits and inexperience in trailer towing.

The goal of this article is to describe different trailer types, trailer equipment, weight ratings, load leveling and some driving techniques.

## Trailer Types:

According to the Recreational Vehicle Industry Association (RVIA) there are over 8 million recreational vehicles of all types in the United States, approximately half of which are recreational trailers.

## Recreational trailers include the following:

1) Fifth Wheel Trailer (Figure 1 and Figure 2) – A fifth wheel trailer connection consists of a “goose neck” that extends over the cargo bed of a truck. At the front of the fifth wheel is a steel box, or “pin box” with a hitch pin that inserts into a hitch that is bolted into the cargo bed of the truck.

Fifth wheel trailers can range from about 24 ft to over 40 ft in length. The heaviest fifth wheel trailers exceed 15,000 lb. Small fifth wheel trailers can be pulled by a ½ ton truck, but some of the larger units require large trucks with proper tow ratings and axle ratings. Most can be pulled by a ¾ ton or 1 ton truck, but a few may require something even larger.

2) Travel Trailer (Figure 3) – A travel trailer, also known as a conventional trailer, uses an A-frame at the front of the trailer to connect to the rear of the tow vehicle. Travel trailers are sold in a variety of types and trim levels, from light weight units with fiberglass walls and aluminum structures to large two or three axle trailers.

Travel trailers can range from around 18 ft to near 40 ft in length, weighing from 3000 lb to over 11,000 lb. Smaller travel trailers, known as ultralights or lightweights, can be pulled by most mid-size SUV's and light trucks. Some can be pulled by mid-size cars. Larger travel trailers require vehicles with greater towing capacity, such as ¾ ton pickups.

3) Folding Trailer (Figure 4) – Folding trailers, also known as pop-up or tent trailers are small trailers that fold down for travel and expand by ‘popping up’ for camping. The towing of folding trailers is similar to the conventional travel trailers and relies on an A-frame.

Folding trailers typically have a single axle and are about 12 to 15 ft in length. They usually weigh less than 3000 lb. Folding trailers are designed to be pulled by light weight vehicles such as cars and small SUV's.

4) Sport Utility Trailer (SUT), Ramp Trailer or Toy Hauler (Figure 5) – SUT's are used for hauling other equipment (e.g. motorcycles, all-terrain vehicles, etc.) and have a large rear door that folds to the ground to become a ramp. SUT's can be either a fifth wheel or a conventional travel trailer.

SUT's, like fifth wheels and travel trailers, come in a variety of sizes and weights and can be pulled by a variety of vehicles. The largest are triple axle fifth wheels that require a 1 ton or larger vehicle. SUT's are designed to have a large cargo carrying capacity in order to accommodate vehicles, gas, tools and other equipment.



Figure 1 – Fifth wheel showing the gooseneck. The pin box is at the front of the trailer. A king pin is attached to the pin box.



Figure 2 – Fifth wheel trailer shown attached to a pickup. The goose neck at the front of the trailer extends over the pickup's cargo bed. The king pin connects to a hitch mounted in the truck bed.



Figure 3 – Conventional travel trailer showing A-frame and A-frame equipment.



Figure 4 – Pop-up travel trailers are a light weight trailer that ‘pops’ up when at the camp site and folds down for travel.

continued on page 16

5) Park Trailer (Figure 6) – A park trailer is a large unit that is designed to be towed to a permanent site or used as temporary housing. They can be heavy and are typically pulled and delivered by a large tow vehicle.

#### Trailer Equipment:

The different types of trailers use a variety of hitching equipment. This hitching equipment includes a fifth wheel hitch, receiver, draw bar, hitch ball, safety chains, coupler, car cord cable, breakaway switch, brake controller, weight distributing bars and sway control.

- Fifth wheel hitch (Figure 7) – A hitch that bolts into a truck bed. The fifth wheel pin connects to the hitch inside the truck bed.
- Receiver (Figure 8) – An assembly on the tow vehicle for fitting the draw bar. The receiver typically bolts to the tow vehicle frame.
- Draw bar/hitch mount/ball mount (Figure 8) – The draw bar fits into the receiver. The hitch ball is mounted on the draw bar.
- Hitch Ball (Figure 8) – A spherical ball onto which the trailer coupler fits.
- Coupler (Figure 9) – The ball socket on the trailer A-frame. The coupler has a pinned lock which securely locks the coupler over the ball.
- Weight Distribution Bars (Figure 9) – Bars used to distribute the load between the axles of the vehicles.
- Safety Chains (Figure 9) – The safety chains are attached to the A-frame and connect to the receiver. In the event that the trailer becomes disconnected, the chains will keep the vehicle and trailer from becoming completely separated. California Vehicle Code Section 29004 specifies safety chain requirements.
- Car Cord or Cable (Figure 9) – The seven pin electric cable which provides electricity to the trailer to operate the brakes, brake lights, turn signals, running lights and tail lights.
- Breakaway Switch (Figure 9) – The breakaway switch is a small box that is attached to the A-frame with a cable that is attached to the tow vehicle. If the trailer becomes completely disconnected the breakaway switch will activate the trailer brakes provided there is sufficient battery power. California Vehicle Code Section 26304(a) requires the use of a breakaway switch.
- Brake controller (Figure 10) – An electronic control box that is mounted inside the tow vehicle, usually under the dash, that independently controls the trailer brakes. California Vehicle Code Section 26303 requires trailers over 1500 lb to have brakes on at least two wheels.

#### Understanding Weight Ratings:

The tow vehicle, trailer and hitching equipment all have weight ratings. These ratings dictate how much the trailer and the tow vehicle can weigh. When weighing a trailer, the weight on the tires and the weight on the A-frame at the coupler need to be determined. The weight at the coupler will be supported by the hitch ball, draw bar and receiver and will be transferred to the tow vehicle.

Important weight ratings are shown in Table 1. The weight ratings should also be presented in the tow vehicle or trailer Owner's Manual. A good Owner's Manual will explain the weight ratings and how to properly weigh a trailer, and may even provide worksheets to assist the trailer owner in weighing the vehicles. Some manuals are better than others in explaining how to weigh a trailer and what the ratings mean.

Failure to heed the weight ratings, or misunderstanding the ratings can lead to equipment failure, poor handling and other problems.



Figure 5 – Sport Utility Trailers have a storage area for transporting vehicles. The rear door folds down into a ramp in order to load the vehicles.



Figure 6 – Park Trailers are large heavy units meant to be used as temporary housing.



Figure 7 – A fifth wheel hitch mounted in the bed of a truck.

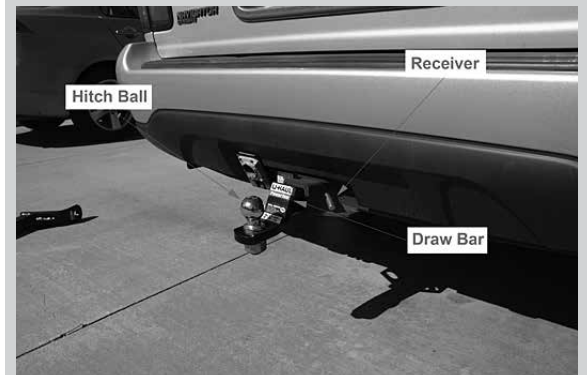


Figure 8 – Draw bar inserted into the receiver. This draw bar has 2 ¼ inch drop.



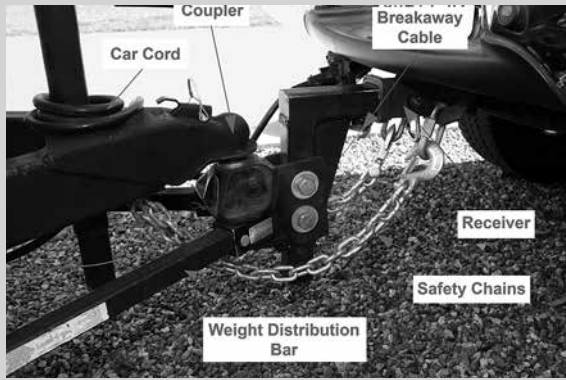


Figure 9 - Safety chains are shown crossed below the draw bar and coupler. The breakaway switch cable is seen going from the A-frame to the receiver. The car cord is wrapped around the jack.



Figure 10 - Trailer brake controller mounted under the dash of a tow vehicle.

Hitch Ratings	V-5 Copperweld Automotive	Capacités de remorquage
Hitch Type Type d'attelage	Maximum Trailer Weight Poids maximal de remorque	Maximum Tongue Weight Poids maximal du timon
Weight Carrying De pare-chocs	5 000 lb (2 268 kg)	600 lb (272 kg)
Weight Distributing Distribution de poids	12 000 lb (5 443 kg)	1 500 lb (680 kg)

Produit au Canada  
 La capacité de remorquage maximale du véhicule remorqueur peut être inférieure.

Figure 11 - Ratings tag on a receiver. The tag shows the recommended ratings for weight carrying and for weight distributing.



Figure 12 - The weight distribution bar attached to the hitch and the trailer A Frame.

Table 1. Rate Weightings

Gross Vehicle Weight Rating (GVWR)	The maximum rated weight of a tow vehicle or trailer.
Gross Axle Weight Rating (GAWR)	The maximum rated load for each axle on the tow vehicle or trailer.
Gross Combined Weight Rating (GCWR)	Maximum weight rating of the tow vehicle and trailer combination. This is provided by the tow vehicle manufacturer.
Unloaded Vehicle Weight (UVW)	Weight of the tow vehicle or trailer when it left the factory.
Cargo Carrying Capacity (CCC)	The cargo that can be carried. Typically this weight is the GVWR minus the UVW, fresh water and propane.
Tow Rating	The maximum trailer weight a given tow vehicle can pull.
Tire Ratings	The tires on the tow vehicle and trailer will have a load rating printed on the sidewall.

Both the tow vehicle and the trailer have a Gross Vehicle Weight Rating (GVWR). The GVWR dictates the maximum weight at which that vehicle can be safely operated. The GVWR and the Gross Vehicle Weight (GVW) are often confused. The GVW is the actual weight of the vehicle, whereas the GVWR is the maximum allowable GVW.

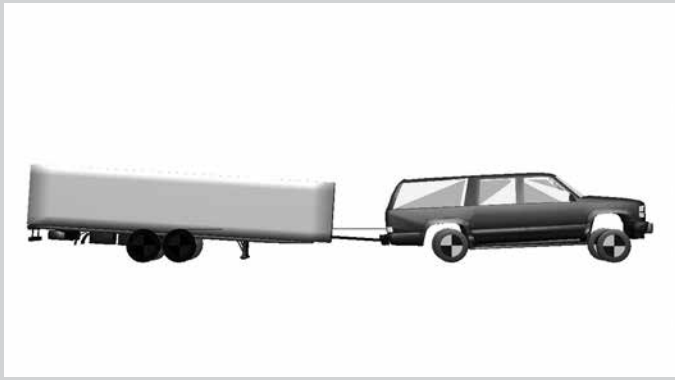
A trailer will increase the weight carried by the tow vehicle axles. When preparing to tow a trailer, knowledge of the GAWR for both vehicles is necessary. The user needs to make sure the GAWR is not exceeded for any axle on either vehicle.

The GCWR is the maximum allowable weight of a tow vehicle plus the trailer it is towing. It is an often misunderstood and neglected rating. If a tow vehicle loaded with cargo and passengers weighs 7,000 lb and has a GCWR of 12,000 lb, then it can only tow 5,000 lb, even if the tow vehicle has a tow rating of 7,000 lb. Weight must be taken out of the trailer as weight is added to the truck, or vice versa. Typically the GCWR can be found on a tag inside the tow vehicles door frame or in the Owner's Manual. Many manufacturers also put the information on the Internet.

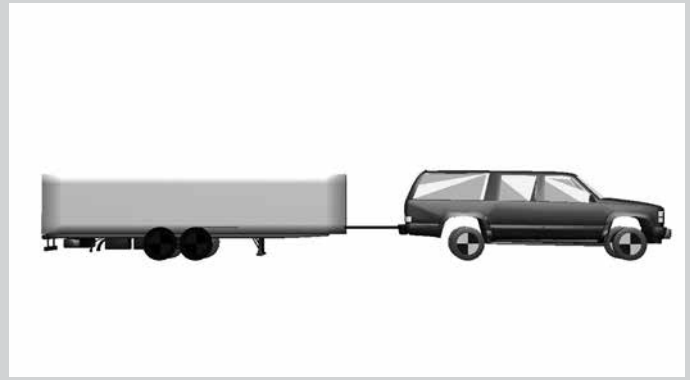
Other ratings to consider include the draw bar, hitch ball, receiver and coupler. Receivers typically will have a hitch load or tongue weight rating and a maximum tow rating. The hitch load or tongue weight rating is the maximum vertical weight that the receiver can support. For example, a receiver may be rated at 1000 lb/10,000 lb which means that the receiver is rated to tow a 10,000 lb trailer with a maximum vertical hitch load of 1000 lb. If a trailer has a weight of 9500 lb, but a hitch weight of 1100 lb, then the receiver load rating has been exceeded. The receiver may be rated higher than the tow vehicle's tow rating. When selecting equipment, the rating of each component needs to be sufficient for the intended towing application. The ratings will be stamped on or affixed to the part in question (see Figure 11 for a sample receiver rating tag).

Whichever rating in Table 1 is reached first will dictate the maximum weight of the system.

The weight of the vehicles and the weight on each component will need to be compared to the ratings. To do this properly requires that the vehicles be properly weighed. The instructions for doing so should be in the trailer Owner's Manual. It is the author's experience that many users rely on the hitch weight published by the trailer manufacturer to make sure weight ratings are not exceeded. The published hitch weight



*Figure 13 - Without load leveling the trailer weighs down the tow vehicle causing the tow vehicle nose to pitch up and the front of the trailer to pitch down.*



*Figure 14 - With load leveling the vehicles are level. Handling and braking are improved.*

is the weight on the hitch as the trailer left the factory, and is not representative of the hitch weight after the trailer has been loaded. Filling the propane tanks, adding water, and loading luggage, food and equipment will change the hitch weight.

Trailers range in weight and length from 2000 lb and 12 ft for a small folding trailer up to 43 ft or longer and over 15,000 lb for large fifth wheel trailers. The tow vehicle needs to have ratings that match or exceed the trailer weight. Most tow vehicles will have a published tow rating, GCWR and GAWR's. Pick-ups and SUV's are the most common vehicles used for towing trailers and there are a number of Internet sites that provide towing capacities of potential tow vehicles. Failure to size the vehicles correctly can lead to towing and operating difficulties.

#### **Load Leveling/Weight Distributing:**

The load on the hitch can have undesirable consequences on tow vehicle handling and performance (Figure 12 & Figure 13). Some of the hitch load can be transferred to the front wheels using weight distribution bars. This process of load leveling keeps the vehicles level, increases the travel of the tow vehicle rear suspension, keeps headlights level, improves visibility and improves braking and handling (Figure 14).

#### **Driving While Towing a Trailer:**

The tow vehicle will handle and brake differently when towing a trailer. Drivers inexperienced with towing a trailer should drive slowly until they have learned the handling and stopping characteristics for the combined vehicles.

The combination will take longer to stop and a driver needs to allow for at least twice the stopping distance when towing a trailer.

Cornering is also different with a trailer. The trailer wheels will track inside of the tow vehicle's wheels and thus the tow vehicle must take wide corners in order for the trailer wheels to clear a curb or sidewalk.

As speed increases, trailer stability, stopping distance and the ability to turn, swerve or maneuver are reduced. Avoid exceeding the posted speed limits and slow down before descending a hill. The trailer will be less stable on a downhill slope. Trailer stability is also reduced in turns because the trailer will push the rear of the tow vehicle towards the outside of the turn and this can lead to jackknifing.

Trailer stability can also be affected by crosswinds or windblast from passing vehicles. Reducing speed in windy conditions will improve the stability and handling of the trailer. Rain or snow reduce the available tire/road friction and require even greater reductions in speed to maintain vehicle control and stability.

#### **Conclusion:**

Safe trailering begins with the proper equipment and proper set up. Consult your owner's manuals for instructions on how to properly weigh and set up the tow vehicle and trailer. If you are not certain about any of the weight ratings or hitching configurations, consult a qualified source. Even with proper equipment and a proper set up, operating a tow vehicle with a trailer poses special challenges. Perhaps the most important factor in safe trailering is to reduce vehicle speed.

#### **About the Author:**

The author of this article is a Licensed Professional Mechanical Engineer who works for MEA Forensic where he regularly reconstructs collisions involving trailers. He has many years of trailer design experience in the recreational industry.

**Additional Reading:** Information on trailer equipment, tow vehicles, weighing your trailer and proper towing techniques can be found from several sources, some of which are listed below:

- The California DMV provides information under their 'Recreational Vehicles and Trailers Handbook' on their website at; <http://www.dmv.ca.gov/pubs/dl648/dl648toc.htm>
- The NHTSA provides a towing guide that can be accessed at; <http://www.nhtsa.dot.gov/Cars/problems/Equipment/towing/Towing.pdf>
- The National Association of Trailer Manufacturers provides safety information that can be downloaded at; [www.natm.com](http://www.natm.com)
- The Recreational Vehicle Industry Association (RVIA) has a website at; [www.rvia.org](http://www.rvia.org)
- Other good sources for information include [Trailerlife.com](http://Trailerlife.com), [drawtite.com](http://drawtite.com) and [rveducation101.com](http://rveducation101.com). ♦

# SDDL Recognition of Law Firm Support

**T**he *Update* traditionally included a list of current SDDL members at the end of each edition. As part of the SDDL Board's proactive efforts to protect the privacy of its members, the *Update* will no longer include a list of current members. We have observed over the course of the last year or so an increasing number of requests from vendors and other bar organizations to hand over the contact information of our members. In each case, we have rejected the request. The SDDL Board is concerned that third parties may use other means to identify our members to target them for the marketing purposes. Because the *Update* is published online and searchable through Google (and other search engines), the decision has been made to discontinue the identification of the entire membership in the *Update*.

In place of the membership list, the SDDL Board will instead recognize some of the outstanding law firms that contribute to SDDL's success. Each edition will feature two categories for recognition: 1) The 100% Club – this recognizes law firms with two or more attorneys where all attorneys in the firm are members of SDDL; and 2) The 10 Firms with the Most SDDL Members – this recognizes firms who have the most amount of attorneys as members of SDDL. If there are any errors in the information provided, please email [rmardian@hcesq.com](mailto:rmardian@hcesq.com), so that corrections can be made for the next edition.

## The 100% Club

- Belsky & Associates
- Butz Dunn & DeSantis
- Gentes & Associates
- Grimm Vranjes & Greer LLP
- Hughes & Nunn, LLP
- Law Offices of Kenneth N. Greenfield
- Letofsky McClain
- The Roth Law Firm
- White Oliver & Amundson APC

## The 10 law firms with the highest SDDL membership

- The Lorber, Greenfield & Polito, LLP – 29 members
- Neil, Dymott, Frank, McFall & Trexler, APLC – 19 members
- Tyson & Mendes LLP – 17 members
- Grimm Vranjes & Greer LLP – 16 members
- Balestreri Potocki & Holmes – 11 members



*SDDL Board of Directors: (from left to right) Colin Harrison, Robert Mardian, Ben Cramer, Patrick Kearns, Dianna Bedri (Executive Director), Sasha Selfridge, Ken Purviance, Andrew Kleiner, Gabriel Benrubi, Eric Dietz and Stephen Sigler*

- Butz Dunn & DeSantis – 11 members
- Wilson Elser Moskowitz Edelman & Dicker LLP – 10 members
- Wingert, Grebing, Brubaker & Juskie, LLP – 9 members
- Farmer Case & Fedor – 9 members
- The Law Offices of Lincoln, Gustafson & Cercos, LLP – 9 members ♦

## SDDL Happy Hour at Dublin Square



**T**he First SDDL Happy Hour took place on March 24, 2015, at Dublin Square Authentic Irish Pub & Grill. The event was sponsored by U.S. Legal Support and was attended by several members, new and old. The attendees enjoyed the opportunity to mingle with one another while enjoying some authentic Irish food and libations.

All in all, the first Happy Hour of the year was a success and proved to be another excellent opportunity to take a few hours away from the office to meet and mingle with colleagues from the defense bar. ♦



*Stephen Sigler, Robert Mardian, Mike Weathers, Robert Harrison*

**SAN DIEGO DEFENSE LAWYERS**

P.O. Box 124890

San Diego, CA 92112



## SAN DIEGO AND ORANGE COUNTY'S LEADERS IN...

- ESI Processing & Hosting
- Data Acquisition & Forensics
- Managed Document Review
- Paper-based Discovery Services



501 W. Broadway Suite 400  
San Diego, CA 92101  
Office: (619) 234-0660

### FREE MCLE SEMINARS!

Call us for information to schedule a complimentary in-person or webinar MCLE seminar on a variety of electronic discovery topics.

[DTIGlobal.com](http://DTIGlobal.com)